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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA  
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9 JAMAL D. HENDRIX,

Case No. 2:15-cv-00560-MMD-NJK

10 Plaintiff,

ORDER

11 v.

12 STATE OF NEVADA, et al.,

13 Defendants.

14 **I. SUMMARY**

15 This case concerns a prisoner's First, Eighth, and Fourteenth Amendment claims  
16 brought pursuant to 42 U.S.C. § 1983. Pending before the Court is Defendants' Motion  
17 for Summary Judgment ("Motion") (ECF No. 72). Also pending before the Court is  
18 Defendants' Motion for Leave to File Confidential Documents under Seal in Support of  
19 Defendants' Motion ("Motion to Seal") (ECF No. 74). Plaintiff failed to file a response to  
20 either the Motion or the Motion to Seal.

21 After reviewing the Motion and the accompanying exhibits, the Court grants in part  
22 and denies in part Defendants' Motion in the manner discussed below. The Court also  
23 grants Defendants' Motion to Seal.

24 **II. BACKGROUND**

25 Plaintiff Jamal Hendrix ("Plaintiff" or "Hendrix"), who is proceeding pro se, is an  
26 inmate in the custody of the Nevada Department of Corrections ("NDOC"). (ECF No. 72  
27 at 2.) Plaintiff brings claims against various NDOC employees alleging claims of  
28 retaliation, excessive force, deliberate indifference to serious medical needs, and

1 procedural as well as property due process violations that occurred while Plaintiff was  
2 housed at High Desert State Prison ("HDSP"). The claims arise from events that occurred  
3 on three separate dates: November 15, November 16, and November 18, 2013.

4 In Count I, Plaintiff asserts claims relating to a cell move and use of force incident  
5 on November 15, 2013. According to Plaintiff, he was escorted by Defendant Gibson to  
6 a classification hearing around 10:30 am that day. (ECF No. 9 at 10, 21.) During this  
7 hearing, Defendant Filson ordered that Plaintiff be returned to his cell. (*Id.* at 10-11, 21.)  
8 Sometime after Plaintiff was returned to his cell, Filson stopped by Plaintiff's cell and told  
9 him that as long as he had a bad attitude, he would not let Plaintiff out of administrative  
10 segregation. (*Id.* at 11, 22.) Filson also stated that if Plaintiff dropped his lawsuit against  
11 certain NDOC staff and stopped writing grievances then Filson would consider giving  
12 Plaintiff another classification hearing. (*Id.* at 11-12, 22.) Around this time, Defendants  
13 Michael Anderson<sup>1</sup> and Dunn also supposedly showed Plaintiff the inmate grievance he  
14 had filed against them for racial discrimination, and Anderson told Plaintiff that the  
15 grievance would be the last he wrote. (*Id.* at 11-12, 22-23.) Plaintiff also claims that  
16 Defendants Filson, Williams, Leavitt and Neven denied Plaintiff's grievances relating to  
17 his complaint against Michael Anderson and Dunn regarding retaliation. (ECF No. 9-1 at  
18 12.)

19 Later that day, Defendant Gibson informed Plaintiff he was being moved. (ECF No.  
20 9 at 12.) Defendants Joseph, Scott and Nelson placed restraints on Plaintiff's hands and  
21 legs and began to remove Plaintiff's personal property from his cell. (*Id.*) Nelson took  
22 Plaintiff to disciplinary segregation, but on the way Plaintiff saw Joseph and Scott take  
23 Plaintiff's legal boxes to the property room and place legal documents in a trash can. (*Id.*  
24 at 12-13.) Plaintiff claims that Michael Anderson and Dunn authorized the confiscation of  
25 these legal documents. (*Id.* at 13.) Plaintiff asked Nelson to take him to the property  
26 sergeant, where Nelson permitted Plaintiff to speak to the property room sergeant. (*Id.* at

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27 <sup>1</sup>There are two defendants with the last name Anderson in this case; therefore, the  
28 Court adds their first names to differentiate them.

1 13.) Dawson then appeared at the property room, grabbed Plaintiff's arm, and ordered  
2 Nelson to take Plaintiff to disciplinary housing. (*Id.* at 14.) Nelson and Dawson then began  
3 "aggressively" walking Plaintiff to disciplinary segregation. (*Id.*) Dawson allegedly  
4 grabbed Plaintiff's head and pushed it down while forcing Plaintiff to walk. (*Id.*) Dawson  
5 then supposedly began hitting Plaintiff in the face, and Plaintiff fell down. (*Id.* at 14-15.)  
6 Nelson then yanked Plaintiff up, bent Plaintiff's arm up in the air, and kned Plaintiff in the  
7 face. (*Id.* at 15.) Dawson then supposedly kned Plaintiff in the chest and punched  
8 Plaintiff again. (*Id.*) Dawson then rolled Plaintiff onto his stomach and placed his knee on  
9 the lower part of Plaintiff's back. (*Id.*) Plaintiff states that he was screaming to see medical.  
10 (*Id.*)

11 Plaintiff states that Defendant Jones came over and placed his knee on Plaintiff's  
12 neck while simultaneously punching him in the face, Defendant Paul Anderson kned  
13 Plaintiff twice on the left side of the rib cage, and Defendant Trailer placed his foot on  
14 Plaintiff's face. (*Id.*) Supposedly Dawson and Jones told Plaintiff that if he stopped writing  
15 grievances and let go of the lawsuit then things would start getting better for Plaintiff. (*Id.*  
16 at 16.) Michael Anderson and Dunn arrived on scene and supposedly stated that they  
17 had "got" Plaintiff and that Plaintiff's books now belonged to them. (*Id.*) Dawson, Jones,  
18 Trailer and Paul Anderson then yanked Plaintiff up from the ground, took him to a building,  
19 and forced him to strip search while he was in extreme pain. (*Id.*) Plaintiff states that he  
20 asked Dawson if he could go to the infirmary, but Dawson told Plaintiff to "shut up and  
21 stop asking because he wasn't going to go." (*Id.* at 17.) Plaintiff also states that Scott told  
22 Dawson to put the handcuffs tightly on Plaintiff's writing hand, that Trailer, Jones, and  
23 Paul Anderson put the leg shackles on too tightly, and that Jones refused to let Plaintiff  
24 see medical, stating, "Medical already saw you." (*Id.*)

25 On the way to the disciplinary unit, Defendant Stroud purportedly ignored Plaintiff's  
26 pleas for help while watching as Jones and Trailer dragged Plaintiff into his cell. (*Id.* at  
27 17-18.) Plaintiff states that he became dizzy after Jones squeezed Plaintiff's neck and  
28 Trailer squeezed Plaintiff's upper arm. (*Id.* at 17.) At the cell door, Jones supposedly

1 kned Plaintiff in the back of the leg, causing Plaintiff to fall and hit his chin on the cell  
2 floor. (*Id.* at 18.)

3 In Count II, Plaintiffs asserts claims relating to a preliminary disciplinary hearing.  
4 Around 5:00 pm on November 16, 2013, Defendant Davis escorted Plaintiff to Defendant  
5 Emling's office where Plaintiff received notice of disciplinary charges for assault on staff.  
6 (*Id.*) Emling called Plaintiff's witness, Defendant Nelson. (*Id.*) Plaintiff requested that the  
7 telephone conversation with Nelson be placed on speaker phone or that he be able to  
8 listen to Nelson's response. (*Id.* at 18-19.) Emling declined and allegedly choked Plaintiff  
9 before sending Plaintiff back to solitary confinement. (*Id.* at 19.) Plaintiff states that  
10 Defendants Daniels, Nash, Neven and Williams denied Plaintiff's grievances relating to  
11 the incident. (ECF No. 9-1 at 14.)

12 In Count III, Plaintiff states claims relating to a disciplinary hearing. Around 3:00  
13 pm on November 18, 2013, a disciplinary hearing on assault was conducted. (ECF No. 9  
14 at 19.) Allegedly Defendant Potter told Plaintiff he had already been found guilty of the  
15 charges and Plaintiff would be sent to Ely State Prison. (*Id.*) In response, Plaintiff told  
16 Potter he had a witness. (*Id.*) Potter then supposedly told Plaintiff no witness would be  
17 called, stating that one of the officers had been suspended as a result of Plaintiff's  
18 testimony to the Inspector General regarding an excessive force incident. (*Id.*) Plaintiff  
19 was found guilty of assault. (*Id.* at 20.) Plaintiff also claims that Defendants Neven, Foster,  
20 Daniels and Filson denied his inmate grievances regarding this incident. (ECF No. 9-1 at  
21 17.)

### 22 **III. MOTION TO SEAL (ECF No. 74)**

23 Defendants request that certain exhibits be sealed—exhibits A, D, E, F, G, H, and  
24 J (ECF Nos. 75-1, 75-2, 75-3, 75-4, 75-5, 75-6, 75-7)—because they include Plaintiff's  
25 confidential medical records, case notes, and a video recording of a strip search of  
26 Plaintiff. (ECF No. 74 at 3.) To establish that the documents are sealable, the parties  
27 “must overcome a strong presumption of access by showing that ‘compelling reasons  
28 supported by specific factual findings ... outweigh the general history of access and the

1 public policies favoring disclosure.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 679  
2 (9th Cir.2010) (citation omitted).

3 Defendants argue that pursuant to NRS § 629.061, Administrative Regulation 639,  
4 and the Health Information Protection and Portability Act, Exhibits D, E, F, G, and H  
5 should be sealed because they consist of Plaintiff’s medical records. (ECF No. 74 at 3.)  
6 Because Plaintiff has not waived his confidentiality and to prevent Plaintiff’s personal  
7 possession of the documents in his cell, Defendants contend that these exhibits should  
8 be filed under seal. (*Id.*) Defendant argues that because Exhibit A includes confidential  
9 and sensitive details about Plaintiff as well as other inmates whom Plaintiff has associated  
10 with, it should remain sealed to prevent Plaintiff’s personal possession of the document  
11 in his cell and to protect Plaintiff’s confidentiality. (*Id.*) Defendant also argues that Exhibit  
12 J should remain under seal to protect Plaintiff’s privacy because it includes obscene  
13 language and footage of Plaintiff’s strip search on November 15, 2013. (*Id.*) The Court  
14 agrees and finds that all of the exhibits should remain under seal as they contain  
15 confidential information about Plaintiff, including Plaintiff’s medical records as well as  
16 medical kites and a video in which Plaintiff appeared naked.

17 Therefore, Defendants’ Motion to Seal is granted.

#### 18 **IV. MOTION**

##### 19 **A. Legal Standard**

20 “The purpose of summary judgment is to avoid unnecessary trials when there is  
21 no dispute as to the facts before the court.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*,  
22 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the  
23 pleadings, the discovery and disclosure materials on file, and any affidavits show “there  
24 is no genuine issue as to any material fact and that the moving party is entitled to  
25 judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue  
26 is “genuine” if there is a sufficient evidentiary basis on which a reasonable fact-finder  
27 could find for the nonmoving party, and a dispute is “material” if it could affect the outcome  
28 of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248

1 (1986). Where reasonable minds could differ on the material facts at issue, however,  
2 summary judgment is not appropriate. See *id.* at 250-51. “The amount of evidence  
3 necessary to raise a genuine issue of material fact is enough ‘to require a jury or judge to  
4 resolve the parties’ differing versions of the truth at trial.’” *Aydin Corp. v. Loral Corp.*, 718  
5 F.2d 897, 902 (9th Cir. 1983) (*quoting First Nat’l Bank v. Cities Service Co.*, 391 U.S. 253,  
6 288-89 (1968)). In evaluating a summary judgment motion, a court views all facts and  
7 draws all inferences in the light most favorable to the nonmoving party. *Kaiser Cement*  
8 *Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

9         The moving party bears the burden of showing that there are no genuine issues of  
10 material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). “In order  
11 to carry its burden of production, the moving party must either produce evidence negating  
12 an essential element of the nonmoving party’s claim or defense or show that the  
13 nonmoving party does not have enough evidence of an essential element to carry its  
14 ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co., Ltd v. Fritz Cos.,*  
15 *Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56’s  
16 requirements, the burden shifts to the party resisting the motion to “set forth specific facts  
17 showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. The nonmoving  
18 party “may not rely on denials in the pleadings but must produce specific evidence,  
19 through affidavits or admissible discovery material, to show that the dispute exists,” *Bhan*  
20 *v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply  
21 show that there is some metaphysical doubt as to the material facts.” *Orr v. Bank of Am.,*  
22 *NT & SA*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted). “The mere  
23 existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient.”  
24 *Anderson*, 477 U.S. at 252.

25         Hendrix did not respond to the Motion despite the multiple extensions of time  
26 granted. Nevertheless, the Court must consider the allegations in Hendrix’s verified  
27 complaint as evidence in evaluating his opposition to Defendants’ Motion. *Jones v.*  
28 *Blanas*, 393 F.3d 918, 923 (9th Cir. 2004) (finding that courts must consider a pro se

1 party's contentions offered in motions and pleadings as evidence in his opposition to the  
2 motion for summary judgment "where such contentions are based on personal knowledge  
3 and set forth facts that would be admissible in evidence, and where [he] attested under  
4 penalty of perjury that the contents of the motions or pleadings are true and correct.").

5 **B. Count I<sup>2</sup>**

6 In Count I, Hendrix brings claims for retaliation, excessive force, deliberate  
7 indifference to serious medical needs, and property due process violations against  
8 several Defendants. (ECF No. 9 at 10-19, 21-23; ECF No 9-1 at 1-12; ECF No. 8 at 7-  
9 10.) The Court grants in part and denies in part summary judgment as to the claims in  
10 Count I.

11 **i. First Amendment Retaliation Claim**

12 Hendrix alleges that on November 15, 2013, Defendants Michael Anderson and  
13 Dunn<sup>3</sup> ordered Defendants Joseph, Scott, and Nelson to confiscate his legal materials  
14 because Hendrix had filed a racial discrimination grievance against Michael Anderson.  
15 (ECF No. 9 at 22-23; ECF No. 9-1 at 1-3.) He also alleges that Defendants Gibson,  
16 Leavitt, Kuloloia, and Filson retaliated against him for filing grievances and lawsuits  
17 against NDOC staff by refusing to allow Hendrix to proceed with his classification hearing  
18 (ECF No. 9 at 21-22) and that Defendants Williams, Filson, Neven, and Daniels retaliated  
19 against him for filing grievances by denying his particular grievances about the prior two  
20 incidents (ECF No. 9-1 at 12.)

21 A viable First Amendment retaliation claim in the prison context requires a plaintiff  
22 to allege "(1) [a]n assertion that a state actor took some adverse action against an inmate  
23 (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the  
24 inmate's exercise of his First Amendment rights, and (5) the action did not reasonably  
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26 <sup>2</sup>In the section discussing Count I, the Court addresses each claim by type, while  
27 in the sections discussing Counts II and III the Court addresses the claims by defendant.

28 <sup>3</sup>Dunn did not join this Motion; therefore, the merits of this claim are analyzed only  
as they pertain to Defendant Michael Anderson.

1 advance a legitimate correctional goal.” See *Rhodes v. Robinson*, 408 F.3d 559,  
2 567-68 (9th Cir. 2005) (internal footnote omitted).

3 Defendant Michael Anderson contends that as a law librarian he did not have the  
4 authority to order or authorize Defendants Joseph and Scott, who are correctional  
5 sergeants, or Defendant Nelson, who is a correctional officer, to search, confiscate, or  
6 destroy Hendrix’s legal materials. (ECF No. 72 at 10-11; ECF No. 72-23 at 3.) As a result,  
7 Michael Anderson contends that he did not take any adverse action against Hendrix as  
8 is required for a claim of retaliation. As to the claim against Michael Anderson, Plaintiff  
9 merely alleges that his legal boxes were “authorized to be confiscated by . . . Anderson”  
10 and that prior to this confiscation Michael Anderson stated to Hendrix that he “might as  
11 well give all [his] legal material away.” (ECF No. 9 at 12-13.) Hendrix also alleges that  
12 while Hendrix was detained that same day, Michael Anderson stated, “I told you I would  
13 get you, now your books belong to us.” (ECF No. 9 at 16.) None of these allegations  
14 address whether Michael Anderson had the authority to order correctional sergeants or  
15 officers to confiscate Hendrix’s legal boxes. Moreover, in Defendants Joseph, Scott, and  
16 Nelson’s declarations, they state that they confiscated excessive legal materials when  
17 moving Hendrix to a segregation unit because he was allowed only ten checked-out law  
18 materials—such as case laws and references—at a time, and any excess law materials  
19 were considered to be property of the prison or state. (ECF No. 72-17 at 3; ECF No. 72-  
20 24 at 3-4; ECF No. 72-25 at 3-4.) Defendant Joseph also states that he consulted  
21 Anderson as to what law materials belonged to the state, but Joseph states that Michael  
22 Anderson did not order or authorize him or the other officers to destroy Hendrix’s property.  
23 (ECF No. 72-24 at 4.) Because Hendrix does not dispute that Anderson, the law librarian,  
24 does not have the authority to order correctional sergeants or officers to confiscate an  
25 inmate’s materials, this claim is granted in favor of Michael Anderson.

26 Similarly, Defendants Joseph, Nelson and Scott contend that they were not  
27 ordered by Anderson to confiscate Hendrix’s legal materials and that, if the Court finds  
28 that the confiscation of Hendrix’s materials still amounts to an adverse action, there was



1 a legitimate penological goal for confiscation of Hendrix's property. (ECF No. 72 at 11.)  
2 Thus, because Hendrix was being transported to a segregation unit where there are more  
3 restrictive property limits than in general population units, the confiscation was based on  
4 prison policy limiting the number of materials allowed in disciplinary segregation. (*Id.*)  
5 Although the Court must view the evidence in the light most favorable to Plaintiff, Plaintiff  
6 has failed to rebut Defendants' assertion that the basis of confiscation was a legitimate  
7 penological goal. Therefore, summary judgment is granted in favor of Defendants Joseph,  
8 Nelson and Scott as to the retaliation claim against them in Count I.

9 Defendant Filson contends that he did not allow Hendrix to proceed with his  
10 classification hearing because Hendrix's behavior threatened safety and security—a  
11 legitimate penological interest—and that Hendrix's removal is consistent with NDOC  
12 regulations. (ECF No. 72 at 10.) Because Hendrix failed to respond to the motion for  
13 summary judgment, he has failed to rebut the justification for his removal from the hearing.  
14 Moreover, Filson's denial of Hendrix's grievances related to this incident is consistent with  
15 the removal being on the basis of a legitimate penological interest. Therefore, summary  
16 judgment is granted in favor of Filson as to the claims against him in Count I.

17 In light of the Court's finding that the removal of Hendrix was based on a legitimate  
18 penological interest, summary judgment is also granted in favor of Defendants Gibson,  
19 Leavitt, Kuloloia, Williams, Neven, and Daniels as to the claim against them in Count I.

20 The First Amendment retaliation claim in Count I is therefore granted in favor of  
21 Defendants Michael Anderson, Joseph, Nelson, Scott, Filson, Gibson, Leavitt, Kuloloia,  
22 Williams, Neven, and Daniels.

## 23 **ii. Eighth Amendment Excessive Force Claim**

24 Hendrix alleges that Defendants Dawson, Nelson, Paul Anderson, Trailer, Jones,<sup>4</sup>  
25 Scott, Stroud, Neven, Filson, Williams, and Dreesen used excessive force when escorting  
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27 <sup>4</sup>Jones did not join the Motion; therefore, this claim is addressed only as to the  
28 other listed defendants.

1 him to disciplinary segregation on November 15, 2013. (ECF No. 9 at 14-18; No. 9-1 at  
2 3-11.)

3 An Eighth Amendment claim for excessive force turns on whether force was  
4 applied in a good-faith effort to maintain or restore discipline, or whether it was applied  
5 maliciously and sadistically for the purpose of causing harm. *Hudson v. McMillian*, 503  
6 U.S. 1, 6-7 (1992) (citing *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986)). In determining  
7 whether the use of force was wanton and unnecessary, the court may consider the need  
8 for application of force, the relationship between that need and the amount of force used,  
9 the threat reasonably perceived by the responsible officials, and any efforts made to  
10 temper the severity of a forceful response. *Id.* at 7. While an inmate need not have  
11 suffered a serious injury in order to bring an excessive force claim against a prison official,  
12 the Eighth Amendment's prohibition on cruel and unusual punishments necessarily  
13 excludes from constitutional recognition *de minimis* uses of physical force. *Id.* at 9-10.

14 Hendrix alleges that Dawson grabbed his head and forced it downwards, ordering  
15 him to continue walking whilst handcuffed and shackled. (ECF No. 9-1 at 4.) Dawson then  
16 purportedly began punching Hendrix in the face, "ran and jumped" on Hendrix's chest  
17 with his knee, and finally turned Hendrix onto his stomach while pressing his knee into  
18 Hendrix's back. (*Id.* at 5.) By contrast, Dawson avers that as he escorted Hendrix to a  
19 new housing unit, Hendrix ceased walking and pulled his head and upper body back in  
20 an aggressive motion towards Dawson, which appeared to be an attempt to head butt  
21 him. (See ECF No. 72-9 at 2.) Dawson responded with force, securing Hendrix to the  
22 ground in order to "restore [his] discipline and to maintain safety and security." (ECF No.  
23 72 at 14.) Defendants also point to medical records showing a lack of "wounds, abrasions,  
24 or problems that would be present after the type of excessive force alleged by Hendrix."  
25 (*Id.*) However, the Court finds that the exact degree of force used by Dawson is  
26 indiscernible from the evidence submitted, as in the Report on the Use of Force Defendant  
27 Nelson states that Dawson used an "under hook take down" but in Defendant Nelson's  
28 declaration he states that Dawson "quickly restrained" Hendrix by grabbing Hendrix's

1 shoulder and placing him on the ground. (ECF No. 72-9 at 2; ECF No. 72-17 at 4.)  
2 Meanwhile, in Dawson's declaration, he states that he "slid [his] hand up [Hendrix's] back  
3 onto [Hendrix's] shoulder, and secured [Hendrix] to the ground." (ECF No. 72-18 at 4.)  
4 Even if Hendrix had attempted to strike Dawson using his head in the manner of a head  
5 butt, it is unclear what degree of force was actually used in response or whether any force  
6 preceded the restraint, as Hendrix alleges in his verified complaint that Dawson  
7 unnecessarily punched him in the face prior to being restrained on the ground. (See ECF  
8 No. 9 at 14-15.) Therefore, the Court denies summary judgment as to Dawson on the  
9 excessive force claim against him in Count I.

10 Similarly, Hendrix contends that during the same incident, Defendant Nelson  
11 grabbed him by the handcuffs, bent his left arm up in the air, and then kneed him in the  
12 face. (ECF No. 9 at 15.) While Nelson states that he merely secured Hendrix's upper left  
13 torso after Dawson responded to Hendrix's attempted head butt, there is a genuine factual  
14 dispute as to whether Nelson used more than *de minimis* force because it is unclear if  
15 this incident occurred prior to initiation of the submitted video recording (ECF No. 76).  
16 Therefore, the Court denies summary judgment as to the excessive force claim against  
17 Nelson in Count I.

18 Hendrix alleges that Paul Anderson kneed him twice in his ribs after Dawson and  
19 Nelson had secured him on the ground. (ECF No. 9-1 at 6.) In his declaration, however,  
20 Paul Anderson<sup>5</sup> states that he has never worked at HDSP. (ECF No. 72-27 at 3.) Because  
21 Plaintiff fails to indicate otherwise, the Court finds there is no genuine dispute as to  
22 whether Paul Anderson kicked Hendrix. Therefore, summary judgment is granted in favor  
23 of Paul Anderson as to the excessive force claim against him in Count I.

24 Hendrix alleges that while he was on the ground following the use of force by  
25 Nelson and Dawson, Defendant Trailer placed his foot on Hendrix's face and that Trailer  
26 subsequently applied Hendrix's leg shackles too tightly and dragged Hendrix into his cell.

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27 <sup>5</sup>Hendrix calls this correctional officer merely "Anderson" in the complaint. (ECF  
28 No. 9 at 15.)

1 (ECF No. 9-1 at 6, 8, 10.) Trailer avers in his declaration that these events did not  
2 transpire. (ECF No. 72-28 at 3.) While Defendants have also filed a video recording  
3 following the use of force incident, the video begins with Hendrix face down on the ground  
4 and several officers restraining him, making it unclear to the Court how long Hendrix was  
5 restrained on the ground before the recording began. (See ECF No. 76.) Therefore, there  
6 are triable issues of fact as to whether Trailer used unnecessary and excessive force prior  
7 to the initiation of recording. The Court therefore denies summary judgment as to the  
8 excessive force claim against Trailer in Count I.

9 Hendrix alleges that when a HDSP nurse evaluated his injuries following the use  
10 of force incident, Defendant Scott pushed her off<sup>6</sup> and instructed Defendant Dawson to  
11 tightly handcuff Hendrix's writing hand. (ECF No. 9-1 at 7-8.) Defendants argue that  
12 because Scott made no physical contact with Hendrix, he did not use excessive force  
13 against him. (See ECF No. 72 at 15-16.) However, Defendant Scott was a correctional  
14 sergeant while Dawson was a senior correctional officer, ostensibly making Scott  
15 Dawson's supervisor. (See ECF No. 72-18 at 3; *see also* ECF No. 72-25 at 3.) Therefore,  
16 there are triable issues of fact as to whether Scott directed Dawson to engage in  
17 excessive force. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that "[a]  
18 supervisor is only liable for constitutional violations of his subordinates if the supervisor  
19 participated in or directed the violations, or knew of the violations and failed to act to  
20 prevent them"). However, the Court agrees with Defendants that if Scott had pushed the  
21 nurse, this does not demonstrate an "unnecessary and wanton infliction of pain" on  
22 Hendrix. (ECF No. 72 at 16 (quoting *Whitley v. Albers*, 475 U.S. at 320).) The Court  
23 therefore denies summary judgment as to the excessive force claim against Defendant  
24 Scott in Count I.

25 Hendrix alleges that Defendant Stroud, an associate warden at HDSP, ignored his  
26 pleas for help while watching correctional officers drag Hendrix into his cell. (ECF No. 9

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28 <sup>6</sup>It is unclear whether this is meant figuratively or literally.

1 at 17; ECF No. 9-1 at 9; ECF No. 72-29 at 3.) Defendants contend that because Stroud  
2 did not personally participate in the alleged excessive force, he cannot be liable for it.  
3 (ECF No. 72 at 16.) The Court agrees. Here, there are also no allegations that Stroud  
4 authorized or directed the purported use of excessive force by officers against Hendrix.  
5 Therefore, summary judgment is granted in favor of Defendant Stroud as to the excessive  
6 force claim against him in Count I.

7 Hendrix alleges that Defendants Neven, Filson, Williams, and Dreesen condoned  
8 the excessive force against Hendrix through the grievance process. (ECF No. 9-1 at 10.)  
9 Defendants argue that neither supervisory liability nor grievance responses give rise to  
10 liability under section 1983. (ECF No. 72 at 16.) The Court agrees. Hendrix does not claim  
11 that these Defendants authorized or directed the use of force, and their knowledge  
12 through the grievance process after the fact would not have enabled them to prevent the  
13 alleged use of force from occurring.

14 Hendrix also alleges that Neven failed to properly train Defendants, which resulted  
15 in the excessive force incident. Defendants argue that because Hendrix fails to allege any  
16 actual personal participation by Neven and there are no allegations Neven knew of the  
17 alleged force by other Defendants, summary judgment should be granted in his favor.  
18 (ECF No. 72 at 16-17.). The Court agrees.

19 Therefore, the Court grants summary judgment as to the excessive force claim  
20 against Defendants Neven, Filson, Williams and Dreesen.

21 **iii. Eighth Amendment Deliberate Indifference Claim**

22 Hendrix alleges that Adams, Murphy, and Aranas were deliberately indifferent to  
23 Hendrix's serious medical needs by denying his grievances requesting medical attention  
24 related to the excessive force incident on November 15, 2013. (ECF No. 9-1 at 11.)

25 The Eighth Amendment prohibits the imposition of cruel and unusual punishment  
26 and "embodies broad and idealistic concepts of dignity, civilized standards, humanity, and  
27 decency." *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (internal quotation marks and  
28 citation omitted). "To establish an Eighth Amendment violation, a plaintiff must satisfy

1 both an objective standard—that the deprivation was serious enough to constitute cruel  
2 and unusual punishment—and a subjective standard—deliberate indifference.” *Snow v.*  
3 *McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012). To establish the first prong, “the plaintiff  
4 must show a serious medical need by demonstrating that failure to treat a prisoner’s  
5 condition could result in further significant injury or the unnecessary and wanton infliction  
6 of pain.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal quotation marks  
7 omitted). To satisfy the second prong, a plaintiff must show “a purposeful act or failure to  
8 respond to a prisoner’s pain or possible medial need and [ ] harm caused by the  
9 indifference.” *Id.* “Indifference may appear when prison officials deny, delay or  
10 intentionally interfere with medical treatment, or it may be shown by the way in which  
11 prison physicians provide medical care.” *Id.* (internal quotation marks omitted).

12 Defendants contend that they were not deliberately indifferent to Hendrix’s medical  
13 needs because he was evaluated at least six different times by medical staff at both HDSP  
14 and ESP in the two and a half months following the incident. (ECF No. 72 at 19.)  
15 Defendants claim that a nurse, Manjeshwar, arrived on the scene and evaluated Hendrix,  
16 concluding that there were no objective signs of injury. (*Id.*) Defendants further contend  
17 that Hendrix did not have a serious medical need because he walked out of a medical  
18 appointment following the use of force incident while still at HDSP, upon arrival at ESP it  
19 was noted that he did not have any medical issues, and he refused a call with medical  
20 staff at ESP soon after arrival. (ECF No. 72 at 20.) However, given the time period after  
21 the use of force incident occurred (November 15) and the date that Hendrix was  
22 transferred to ESP (December 4), the only documentation about his medical conditions  
23 regarding the November 15 incident while he was still at HDSP was that same day, and  
24 the fact that Hendrix was sending medical kites regarding lingering pain from the use of  
25 force incident in February of 2014 at ESP (ECF No. 75-3 at 17), the Court finds that there  
26 is a genuine dispute of material fact as to whether Defendants Adams, Murphy, and  
27 Aranas denied his medical kites requesting further medical care. Based on such  
28 evidence, there remains a genuine dispute of material fact as to whether the denial of

1 grievances exacerbated the purported injuries sustained by Hendrix during the use of  
2 force incident, see *Shapley v. Nev. Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th  
3 Cir. 1985).

4 The Court therefore denies summary judgment as to the deliberate indifference  
5 claim against Adams, Murphy, and Aranas.

6 **iv. Due Process Claim**

7 Hendrix alleges that on November 15, 2013, Defendants Joseph and Scott  
8 confiscated and destroyed Hendrix's legal materials at the direction of Defendants  
9 Anderson and Dunn. (ECF No. 9-1 at 1-3.)

10 While an authorized, intentional deprivation of property is actionable under the Due  
11 Process Clause, neither a negligent nor intentional unauthorized deprivation of property  
12 by a prison official is actionable if a meaningful, post-deprivation remedy is available for  
13 the loss. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). An authorized deprivation is one  
14 carried out pursuant to established state procedures, regulations, or statutes. See *Piatt*  
15 *v. MacDougall*, 773 F.2d 1032, 1036 (9th Cir. 1985). However, "when a prison regulation  
16 impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related  
17 to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987).

18 Defendants contend that they confiscated Hendrix's property pursuant to OP  
19 711.02(3) and that this policy furthers a legitimate penological goal of recovering and  
20 retaining State Property. (ECF No. 72 at 21.) According to Defendants, the legitimate  
21 penological goal of this policy is "recovering and retaining State property," which resulted  
22 in the permissible taking of property that did not belong to Hendrix. (*Id.*) Because Plaintiff  
23 has failed to rebut Defendants' assertion that the basis of confiscation was a legitimate  
24 penological goal, the Court grants summary judgment on this claim as to Defendants  
25 Michael Anderson, Dunn, Joseph, and Scott.

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1           **C.     Count II**

2           In Count II, Hendrix brings claims for excessive force against Emling, Daniels,  
3 Nash, Neven, and Williams, and claims for procedural due process against Emling,  
4 Daniels, Nash, Neven and Williams.

5                   **i.     Claims against Emling**

6           Hendrix alleges that Emling choked him to the point of slipping in and out of  
7 consciousness when Hendrix was in Emling's office for a preliminary disciplinary hearing.  
8 (ECF No. 9-1 at 14.) Hendrix also alleges that during this preliminary hearing Emling  
9 spoke to Hendrix's witness on the phone but refused to let Hendrix listen to this testimony.  
10 (*Id.* at 13.)

11           In their Motion, Defendants contend that summary judgment should be granted in  
12 their favor with respect to his excessive force claim against Emling because Hendrix failed  
13 to exhaust his administrative remedies. (ECF No. 72 at 17.) The failure to exhaust  
14 administrative remedies is "an affirmative defense the defendant must plead and prove."  
15 *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (internal quotation marks and citation  
16 omitted). However, the Court is required to review the evidence in the light most favorable  
17 to Plaintiff. *See id.* Because Hendrix claims he exhausted his administrative grievances  
18 (see ECF No. 9-1 at 19) and because Defendants do not cite to any evidence indicating  
19 otherwise, the Court assumes that the excessive force claim against Emling has been  
20 exhausted. Defendants also argue that because the grievance filed by Hendrix does not  
21 make mention of any choking (ECF No. 72-13), there is not a genuine issue of material  
22 fact and Emling is entitled to summary judgment. (ECF No. 72 at 18.) The Court disagrees  
23 as it is required to view the evidence in the light most favorable to Hendrix. Because  
24 Hendrix alleges in his verified complaint that he was choked and Emling denies doing so  
25 (ECF No. 72-30 at 4), there are triable issues of fact for a jury to decide as to whether  
26 Emling choked Hendrix. The Court therefore denies summary judgment as to the  
27 excessive force claim against Emling in Count II.

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1 Defendants also contend that because Administrative Regulation 707 affords  
2 Hendrix a right to request witnesses during disciplinary hearings but not during  
3 preliminary hearings, Hendrix's procedural due process rights were not violated. (ECF  
4 No. 72 at 22.) The Court agrees. It is not clear that Hendrix had a protected liberty interest  
5 in calling a witness in his preliminary hearing. To the extent that Hendrix did have a  
6 protected liberty interest in calling a witness at the preliminary hearing, this interest was  
7 met. A prisoner is not entitled to cross-examine or confront witnesses in prison disciplinary  
8 hearings. *See Wolff v. McDonnell*, 418 U.S. 539, 567-68 (1974). As a logical  
9 consequence of this principle, it is not clearly evident that when presenting a witness in  
10 one's defense the prisoner must hear the witness's testimony.

11 The Court therefore grants summary judgment on the procedural due process  
12 claim in Count II in favor of Emling.

13 **ii. Claims against Daniels, Nash, Neven and Williams**

14 Hendrix alleges that Daniels, Nash, Neven and Williams denied Plaintiff's  
15 grievances related to Emling's excessive force and due process violations. (ECF No. 9-1  
16 at 14.) Because the Court granted summary judgment in favor of Emling on the procedural  
17 due process claim, it also grants summary judgment in favor of Daniels, Nash, Neven and  
18 Williams as to this claim.

19 The Court construes the remaining claim against these defendants as an Eighth  
20 Amendment supervisory liability claim. As stated previously, a supervisor who is informed  
21 of an alleged constitutional violation, such as when reviewing an inmate's administrative  
22 grievance, may be liable if they failed to remedy the constitutional violation. *See Jett*, 439  
23 F.3d at 1096; *see also* discussion *supra* §§ IV(b)(ii) and (iii). However, assuming these  
24 defendants were on notice of the purported choking incident, they would not have been  
25 able to remedy the violation, as there are no allegations or evidence of permanent, serious  
26 medical issues as a result of this incident.

27 Therefore, the Court grants summary judgment in favor of Daniels, Nash, Neven  
28 and Williams as to the claims in Count II.

1           **D.     Count III**

2           In Count III, Hendrix brings claims for retaliation and procedural due process  
3 against Potter, Neven, Foster, Daniels, and Filson. (ECF No. 9 at 18-19; ECF No. 9-1 at  
4 15-17.)

5                   **i.     Claims against Potter**

6           Hendrix alleges that Potter refused to let Hendrix call a witness at his disciplinary  
7 hearing because Hendrix had testified before the inspector general and had caused a  
8 fellow correctional officer to be suspended. (ECF No. 9 at 19-20; ECF No 9-1 at 15-16;  
9 ECF No. 8 at 13-14.)

10          In support of summary judgment, Defendants introduced a form detailing the  
11 disciplinary hearing, which was filled out by Potter. (ECF No. 72 at 23; ECF No. 72-2 at  
12 6-9.) In this form, Potter states that Hendrix elected not to call any witnesses. (ECF No.  
13 72-2 at 7.) Additionally, in the audio recording of the disciplinary hearing, Potter asked  
14 Hendrix if he wished to call any witnesses, to which Hendrix responded “no.” (ECF No.  
15 72-3.) However, in his verified complaint, Hendrix states that prior to the hearing, Potter  
16 informed Hendrix that he had already found Hendrix guilty and that “Potter told [him] that  
17 there will be no kind of witness.” (ECF No. 9-1 at 15.) Defendant does not dispute that he  
18 made this statement to Hendrix. (See ECF No. 72 at 23.) Therefore, it is unclear to the  
19 Court whether Hendrix’s response of “no” when asked if he wanted to call a witness was  
20 genuine. As a matter of law, procedural due process is not met when the decision maker  
21 is neither neutral nor detached. *See Concrete Pipe & Prods. of Cal., Inc. v. Constr.*  
22 *Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 617 (1993). Given Hendrix’s allegations  
23 concerning Potter’s statements that no witnesses would be called and that Potter had  
24 already found Hendrix guilty (ECF No. 9-1 at 15), there are triable issues of fact as to  
25 whether Potter was neutral. Moreover, procedural due process requires that a party be  
26 given an opportunity to be heard at a meaningful time and in a meaningful manner.  
27 *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). Given Potter’s alleged statements prior to the

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1 hearing, there are triable issues of fact as to whether Hendrix was afforded a meaningful  
2 opportunity to be heard.

3 As to Hendrix's claim that Potter's refusal to permit Hendrix to call a witness was  
4 an act of retaliation, the Court also finds that there is a genuine issue of material fact as  
5 to whether Potter actually told Hendrix he had already found him guilty.

6 Therefore, the Court denies summary judgment as to the claims against Potter on  
7 Count III.

8 **ii. Claims against Neven, Foster, Daniels, and Filson**

9 In Count III, Hendrix alleges that Neven, Foster, Daniels, and Filson denied his  
10 grievances. (ECF No. 9-1 at 17; ECF No. 8 at 13.) As Defendants note in their Motion,  
11 there are no allegations that these officers were present at the disciplinary hearing. (ECF  
12 No. 72 at 24.)

13 The Court construes these claims as First and Fourteenth Amendment supervisory  
14 liability claims against these defendants. Neven, Foster and Filson are supervisors.<sup>7</sup>  
15 Because Hendrix does not claim that these Defendants authorized or directed the  
16 purported due process violation, and their knowledge through the grievance process after  
17 the fact would not have enabled them to prevent the alleged violation from occurring, the  
18 Court grants summary judgment in favor of Defendants Neven, Foster, Daniels, and  
19 Filson as to the retaliation and procedural due process claims against them in Count III.

20 **E. Qualified Immunity**

21 Defendants also argue in the alternative that they are entitled to qualified immunity  
22 "to the extent the liability alleged by Hendrix consists of responding to his grievances and  
23 claims of supervisory liability." (ECF No. 72 at 25.) They also argue that no reasonable  
24 prison official would have thought that adhering to the legitimate penological goals of  
25 restoring Hendrix's discipline and maintaining the safety and security of the prison and its  
26 inmates constituted a violation of Hendrix's constitutional rights. (*Id.*) Finally, Defendants

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27 <sup>7</sup>Because Defendant Daniels is a correctional caseworker (ECF No. 9 at 2), and  
28 not a supervisor, summary judgment is granted in his favor.

1 contend that because Hendrix was consistently evaluated by medical staff who  
2 reasonably responded to Hendrix's medical complaints, Defendants are entitled to  
3 qualified immunity for any claims of deliberate indifference to Hendrix's medical needs.  
4 (*Id.*)

5 Because Defendants failed to identify why qualified immunity should apply to the  
6 specific claims that the Court has permitted to proceed, the Court declines to address the  
7 argument as to qualified immunity but permits Defendants leave to file a renewed motion  
8 for summary judgment regarding qualified immunity as to the claims that proceed.

9 **V. CONCLUSION**

10 The Court notes that the parties made several arguments and cited to several  
11 cases not discussed above. The Court has reviewed these arguments and cases and  
12 determines that they do not warrant discussion as they do not affect the outcome of  
13 Defendants' motions.


14 It is therefore ordered that Defendants' Motion for Summary Judgment (ECF No.  
15 72) is granted in part and denied in part.

16 The Court permits the following claims to proceed: the retaliation claim against  
17 Dunn in Count I; the excessive force claims against Dawson, Nelson, Scott, Trailer, and  
18 Jones in Count I; the deliberate indifference claim against Maryeswar, Adams, Murphy,  
19 and Aranas in Count I; the excessive force claim against Emling in Count II; the procedural  
20 due process and retaliation claims against Potter in Count III.

21 The Court also permits Defendants to file a renewed motion for summary judgment  
22 on the basis of qualified immunity. Defendants have twenty-one (21) days from entry of  
23 this Order to file their renewed motion.

24 It is further ordered that Defendants' Motion to Seal (ECF No. 74) is granted.

25 DATED THIS 27<sup>th</sup> day of September 2017

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28   
MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE